

**MEMO ENDORSED**

Mr. Shajohnny Santana  
Reg. No. 77051-054  
F.C.I. Ray Brook  
Post Office Box 900  
Ray Brook, New York 12977

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/2/2021

July 12, 2021

Office of the Clerk  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Shajohnny Santana v. United States, Case No. 17-Cr-00438 (VC)

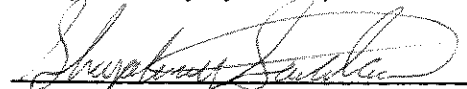
Dear Sir/Madam:

Please find enclosed one (1) original and two (2) copies of the undersigned Pro se Movant's Motion to Expand the Record pursuant to §2255 Rule 7,

I have enclosed the extra copy of this motion so that it can be returned to me in the self addressed stamped envelope in order to acknowledge receipt of the same, and for my personal records.

Thank you for your time and attention to this very important matter, and I look forward to hearing from your office soon.

Very truly yours,



Mr. Shajohnny Santana  
Pro se Movant

enc.

Application GRANTED. The Court will consider the attached affidavits in considering Mr. Santana's § 2255 petition.

On June 7, the Court ordered Mr. Santana to return the signed Attorney-Client Privilege Waiver form by August 7, 2021. The Court has still not received the signed Waiver. Mr. Santana must sign and return the attached Attorney-Client Privilege Waiver form by **October 15, 2021**. If the waiver is not received by the Court by **October 15, 2021**, the Court will deny the § 2255 motion, on the ground that Petitioner failed to authorize the disclosure of information needed to permit the Government to respond to the motion.

The Clerk of Court is directed to mail a copy of this order to Mr. Santana.

SO ORDERED.



9/2/2021

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE

IN THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SHAJOHHNY SANTANA,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civil Case No. 21-Cv-2659

Crim. Case No. 17-Cr-00438

United States District Judge

Honorable Valerie Caproni

MOTION TO EXPAND THE RECORD

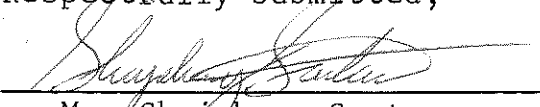
Comes Now, Shajohnny Santana, the undersigned Pro se Movant, and files this motion to expand the record in these §2255 proceedings, pursuant to the Rules Governing Motions under Section 2255 in the United States District Courts ("§2255 Rules"), Rule 7, to include three (3) sworn affidavits in support of his claims of ineffective assistance of counsel in the above captioned collateral proceedings. In support of this Court accepting these sworn affidavits, movant states as follows based in law and fact.

On May 28, 2021, movant caused to be filed his Memorandum in Support of his §2255 Motion, along with three (3) exhibits consisting of unsworn affidavits. (See §2255 Memorandum of Law and Fact in Support of Movant's §2255 Motion, p. 2; hereafter, "§2255 Memo., p. \_\_\_\_"). Movant noted in his §2255 Memorandum that he would be supplementing the unsworn affidavits with sworn ones by way of this motion, and does so now. (Id.; fn. 2).

According to the §2255 Rules, a habeas petitioner may expand the record to include affidavits which support his claims for collateral relief. See §2255 Rules 7.

Wherefore, this Pro se Movant submits along with this motion to expand the record the three (3) sworn affidavits in place of the previously submitted unsworn affidavits filed with his §2255 Memorandum.

Respectfully submitted,



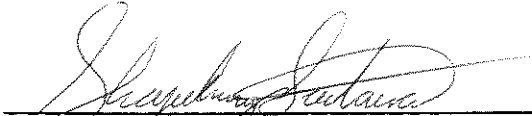
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Mr. Shajohnny Santana  
Pro se Movant  
Reg. No. 77051-054  
F.C.I. Ray Brook  
Post Office Box 900  
Ray Brook, New York 12977

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true complete copy of this motion to expand the record, along with the attached three (3) sworn affidavits, have been given to prison officials for mailing, first class postage prepaid, and sent to: Office to the U.S. Attorney for the Southern District of New York located at One Saint Andrews Plaza, New York, New York 10007.

On this 12 day of July, 2021, pursuant 28 U.S.C. §1746.



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Mr. Shajohnny Santana  
Pro se Movant

**AFFIDAVIT**  
**STATE OF NEW YORK**  
**COUNTY OF NEW YORK**

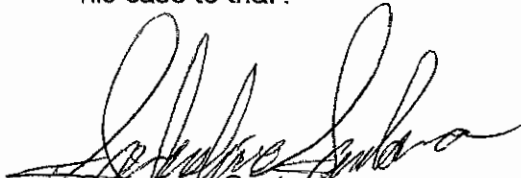
The undersigned, Salustiana Santana, being duly sworn, deposes and says:

1. I am over the age of 18 and am a resident of the State of New York. I have personal Knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.

My name is Salustiana Santana and I am the mother of Shajohnny Santana. I am writing this affidavit to testify to Mr Fishbien and his colleagues asking me and my children to convince my son Shajohnny Santana to take the plea the government was offering. I went to Mr Fishbien's office. On that visit Mr Fishbien asked me to please convince my son to take the plea. He proceeded to tell me that if he does not. My son will be incarcerated for a very long time. He then told me that it will be in Shajohnny best interest to take the plea of 7 years and he then promised me he will come home sooner.


After leaving Mr. Fishbein office my children and I decided that it was in Shajohnny best interest to take the plea according to what his lawyer explained to us. I personally told my son my heart will not be able to go through another 2 weeks of trail. I convinced him to plead guilty even though he was innocent and wanted to prove his innocence through trial.

Shajohnny would have never pleaded guilty to anything if we had not convinced him not to take his case to trial .



Salustiana Santana

State of New York  
County of New York  
Subscribed and Sworn to before  
me this 28 day of JUNE 2021



MANUEL A. DELACRUZ  
Notary Public, State of New York  
No. 01DE6035103  
Qualified in New York County  
Commission Expires December 27, 2021

Declaracion

Estado de Nueva York

Condado De Nueva York


Bajo indicio, Salustiana Santana, bajo juramento, dispongo y declaro:

1. Yo soy mayor de 18 años y soy residente del Estate de Nueva York. Yo tengo conocimiento personal sobre los datos adjunto aquí, y si me llaman como testigo, puedo testificar en completo.
2. Yo no sufro de discapacidades legales y tengo conocimiento personal sobre datos mencionados abajo.

Mi nombre es Salustiana Santana y soy la madre de Shajohnny Santana. Yo estoy escribiendo esta declaración para testificar sobre Mr. Fishbien y sus colegas quienes me pidieron a mí y a mis hijos para convencer a mi hijo Shajohnny Santana para que escogiera el pedido que el gobierno está ofreciendo. Yo fui a la oficina de el Sr. Fishbien en esta visita el Sr. Fishbien me pregunto que por favor tratara de convencer a mi hijo Shajohnny para que escogiera el pedido. El procedió a decir me que esto era en el mejor interés para Shajohnny si el acuerdo de 7 años y el después me prometió que mi hijo saldría más rápido.


Después de retirarme de la oficina del el Sr. Fishbien, Mis hijos y yo decidimos que era en el mejor interés de mi hijo Shajohnny que escogiera la oferta de acuerdo a lo que nos informe el abogado a nosotros. Yo personalmente le dije a mi hijo que yo no podía ir por 2 semanas de juicio. Que mi corazón no lo iba a aguantar. Yo convencí a mi hijo para que escogiera la oferta aunque él era inocente y podía probar su inocencia en un juicio.

Shajohnny nunca hubiera escogido hacer se culpable si nosotros lo hubiéramos convencido a que no fuera para juicio.



Senora Salustiana Santana

State of New York  
County of New York  
Subscribed and Sworn to before  
me this 28 day of JUNE 2021



MANUEL A. DELACRUZ  
Notary Public, State of New York  
No. 01DE6035103  
Qualified in New York County  
Commission Expires December 27, 2021

State of New York)  
County of New York)

My name is Johnny Santana, being duly sworn, depose and says that I was born December 28, 1980, and I am writing this affidavit in regards to my brother, Shajohnny santana who accepted a guilty plea offered by the government after my mother and sister convinced him into not taking his case to trial.

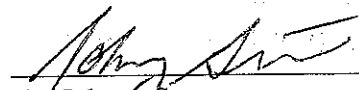
My family and I were asked to come into attorney Harvey Fishbien's office to discuss Shajohnny not taking his case to trial. When we got there, we all sat down with Mr. Fishbien and two of his co-workers, one of them Steven Lynch and the other was a female which I believe her last name was Fishbien also. Throughout the meeting we were discussing Shajohnny's case and which was the best way for him going forward with the case. Mr. Fishbien told us that Shajohnny had two options, the first being Mr. Fishbien explaining what the government was offering to give Shajohnny and the second was that my brother taking his case to trail which Mr. Fishbien saying to us was not the route Shajohnny should go. Mr. Fishbien explained because my brother had beaten trail the first time is like him being hit by a car and being able to recover and survive it, but this time around it was like a tractor trailer coming at him full speed and he had no chance for him to survive it because of how the judge was putting it for him.

Mr. Fishbien mentioned to our family that if Shajohnny took the time the government was offering he had a better chance of coming home in a much shorter time that he was being offered. Once we were told that he had a better chance and that he can come home in a much shorter time than what the government was offering. It felt like a no-brainer to us.

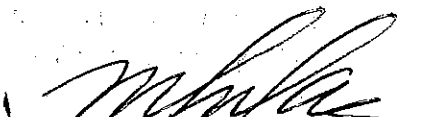
What was asked next by Mr. Fishbien was for us to talk to shajohnny to convince him into taking the time the government was offering because he felt he had no chance to survive the trail this time around so that was exactly what we went and did, after days of going back and forth with my brother, Shajohnny and explaining to him his chances were way better than taking it to trial as per what Mr. Fishbien told us Shajohnny eventually decided to accept the government's plea offer.

Shajohnny did not want to take the plea and would not have taken the time if myself, my mother and sister would have not convinced him to do as per what Mr. Fishbien has asked us to do which is why we are now having to write this affidavit.

I hereby make this affidavit based on the best of my knowledge and belief, and swear that the foregoing is true and correct under penalty of perjury, according to the talks I have with Mr. Fishbien and his co-workers and my brother Shajohnny along with my mother and sister.

  
Mr. Johnny Santana

State of New York  
County of New York  
Subscribed and Sworn to before  
me this 28<sup>th</sup> day of JUNE 2021

  
MANUEL A. DELACRUZ  
Notary Public, State of New York  
No. 01DE6035103  
Qualified in New York County  
Commission Expires December 27, 2021

STATE OF NEW YORK )

)SS:

COUNTY OF NEW YORK)

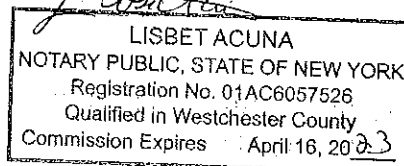
I, Johnysha Santana , being duly sworn; depose and says:

1. I am over the age 18, and made this affidavit on behalf of my brother, Shajohnny Santana.
2. I went to the Law office of Harvey Fishbein after being asked to come to speak with him concerning my brother's criminal case.
3. On, that day I went to Mr. Fishbein's office, I was with my mother (Salustiana Santana) and sibling Johnny Santana and along with Mr. Fishbien was his daughter and his partner Steven Lynch.
4. Mr. Fishbien made clear to me and my family that he needed us to convince Shajohnny to accept the government's plea offer because he was insisting on going to trial.
5. Mr. Fishbien explained to me and my family that Shajohnny was lucky to have been acquitted at an earlier trial and the government would not let him get away again without convicting him this time.
6. After the conversation, I was afraid Shajohnny would receive a long sentence as explained by Mr. Fishbien.
7. During my conversation with Shajohnny the following day, I explained to him what Mr. Fishbien expressed to me and told him to please take the plea because according to Mr. Fishbien he had no chance of winning the trial.
8. Shajohnny said that he didn't want to take the plea because he was innocent of the charges the government put on him, and they involved him in the same things he was just on trial for and was acquitted of.
9. In the end me and my family was able to convince Shajohnny to accept the plea which he reluctantly did, and never would have taken if not for my family convincing him to do so based on the conversation we had with Mr. Fishbien.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

State of New York  
County of New York  
Subscribed and sworn to before me this  
19<sup>th</sup> day of June, 2021  
Before me I saw Johnysha Santana  
LIBBET ACUNA, Notary Public  
Commission Expires April 16, 2023

  
Ms. Johnysha Santana

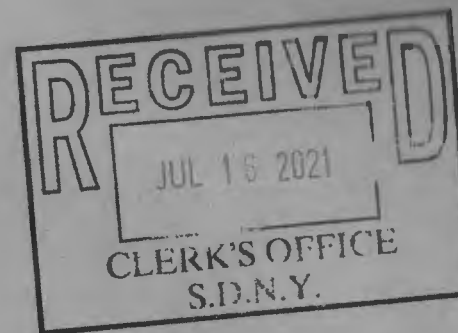




⇔77051-054⇔

Shajohnny Santana  
PO BOX 300  
RAY Brook, NY 12977  
United States

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criminal  
case  
operations

USM P3  
SDNY

⇔77051-054⇔

Office Of The Clerk  
US District Court  
Southern District Of New York  
500 Pearl Street  
NEW YORK, NY 10007  
United States

FCI RAY BROOK  
P.O. BOX 300 RAY BROOK, NEW YORK

DATE: 7/14/21

"The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer enclosed correspondence for forwarding to another address, please return the enclosed to the above address."



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**ORDER REGARDING ATTORNEY-CLIENT PRIVILEGE WAIVER**  
**(INFORMED CONSENT)**

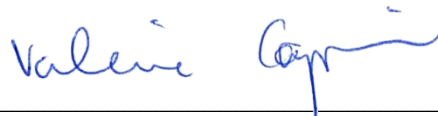
WHEREAS by making the motion, the Defendant has waived as a matter of law the attorney-client privilege with respect to the issues necessary to resolve his motion;

IT IS HEREBY ORDERED that Counsel shall give sworn testimony, in the form of affidavits, addressing the allegations of ineffective assistance of counsel made by the Defendant; and it is further

ORDERED that Shajonny Santana execute and return to this Court within 60 days from today's date the accompanying "Attorney-Client Privilege Waiver (Informed Consent)" form. If the document is not received by the Court within 60 days from today's date, the Court will deny the § 2255 motion, on the ground that the movant failed to authorize the disclosure of information needed to permit the Government to respond to the motion; and it is further

ORDERED that the Government shall file an answer or other pleadings in response to the motion within sixty days of the date that the affidavits of Counsel are made available to the Government.

Dated: New York, New York  
June 7, 2021



HONORABLE VALERIE E. CAPRONI  
UNITED STATES DISTRICT JUDGE

The Clerk of Court is directed to mail this order and attachment to Mr. Santana.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
SHAJONNY SANTANA,	:	
Petitioner,	:	
	:	
- v. -	:	17 Cr. 438 (VEC) /
	:	21 Civ. 2659 (VEC)
UNITED STATES,	:	
	:	
-----	X	

**Attorney-Client Privilege Waiver (Informed Consent)**

**To: Defendant Shajonny Santana (Reg. No. 77051-054):**

You have made a motion based, in part, on the ground that you received ineffective assistance from your former lawyers, Harvey Fishbein, Esq., and Lorraine Gauli-Rufo, Esq. (“your former attorneys”). The Court has reviewed your papers and determined that it needs your former attorneys’ testimony in order to evaluate your motion.

By making this motion, you have waived the attorney-client privilege you had with Mr. Fishbein and Ms. Gauli-Rufo to the extent relevant to determining your motion. This means that if you wish to press your motion, you cannot keep the communications between yourself and your former attorney a secret—you must allow them to be disclosed to the Government and to the Court pursuant to court order. The Court has already issued an Order (copy attached) ordering Mr. Fishbein and Ms. Gauli-Rufo to provide affidavits to the Government. Additionally, the Government may discuss with Mr. Fishbein and/or Ms. Gauli-Rufo communications between him/her and you regarding your criminal case and subsequent appeal, consistent with your waiver of the attorney-client privilege by making your motion. This Informed Consent form is designed to ensure that you fully understand and agree to this.

If you wish to proceed with your motion, you must sign this statement and return it to the Court. The form constitutes your authorization to your former attorney to disclose confidential communications: (1) in response to a Court order; and (2) to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by your motion.

You should know that if you sign this authorization, you run the risk that your former attorney will contradict your statements about his or her representation of you. However, you should also know that the Court will deny your motion if you do not authorize your former attorney to testify in this matter.

You must return this form, signed by you, within 60 days of the date of the accompanying Order. If the Court does not receive this form, signed by you, within that time, the Court will automatically deny your motion.

**AUTHORIZATION**

I have read the Court's Order dated June \_\_\_\_\_, 2021 and this document headed Attorney-Client Privilege Waiver (Informed Consent). I hereby authorize my former attorneys, Harvey Fishbein, Esq., and Lorraine Gauli-Rufo, Esq., to testify in this matter only pursuant to court order, and only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by my motion.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Shajonny Santana